

U.S. Customs and Border Protection, DHS; Treas.

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103.4–103.13 [Reserved]

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AUTHORITY: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 103.31 also issued under 19 U.S.C. 1431;

Section 103.31a also issued under 19 U.S.C. 2071 note and 6 U.S.C. 943;

Section 103.33 also issued under 19 U.S.C. 1628;

Section 103.34 also issued under 18 U.S.C. 1905.

Section 103.35 also issued under E.O. 12600 of June 23, 1987.

SOURCE: T.D. 81–168, 46 FR 32565, June 24, 1981, unless otherwise noted.

§ 103.0 Scope.

This part governs the production/disclosure of agency-maintained documents/information requested pursuant to the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), the Privacy Act of 1974, as amended (5 U.S.C. 552a), and/or under other statu-

tory or regulatory provisions and/or as requested through administrative and/or legal processes. In this respect, this part contains regulations on production or disclosure in federal, state, local, and foreign proceedings and includes specific information pertaining to the procedures to be followed when producing or disclosing documents or information under various circumstances. In addition, this part contains regulations on other information subject to restricted access. As information obtained by CBP is derived from myriad sources, persons seeking information should consult with the appropriate field officer before invoking the formal procedures set forth in this part. Except for 19 CFR 103.35, the regulations in this part supplement the regulations of the Department of Homeland Security regarding public access to records found at 6 CFR part 5. For purposes of this part, the CBP Office of the Chief Counsel is considered to be a part of CBP.

[CBP Dec. 15–16, 80 FR 71692, Nov. 17, 2015]

Subpart A—Production of Documents/Disclosure of Information Under the FOIA

§ 103.1 Public reading room.

CBP maintains a virtual public reading room at <http://foiarr.cbp.gov/> where the material required to be made available under 5 U.S.C. 552(a) and this part may be inspected and copied.

[CBP Dec. 15–16, 80 FR 71692, Nov. 17, 2015]

§ 103.2 Department of Homeland Security Freedom of Information Act procedures.

(a) *Department of Homeland Security FOIA regulations.* In order to process requests for documents/information and appeals under the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), except as provided in paragraph (b) of this section, CBP applies the Department of Homeland Security FOIA regulations in 6 CFR part 5, subpart A.

(b) *Exception.* Notwithstanding section 5.8 of title 6, CBP retains its own policy on the treatment of confidential

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commercial information provided in § 103.35.

[CBP Dec. 15–16, 80 FR 71692, Nov. 17, 2015]

§ 103.3 Department of Homeland Security Privacy Act procedures.

Department of Homeland Security Privacy Act regulations. In order to process access requests for documents/information and appeals under the Privacy Act of 1974, as amended (5 U.S.C. 552a), CBP applies the Department of Homeland Security Privacy Act regulations in 6 CFR part 5, subpart B.

[CBP Dec. 15–16, 80 FR 71692, Nov. 17, 2015]

§§ 103.4–103.13 [Reserved]

Subpart B—Production or Disclosure in Federal, State, Local, and Foreign Proceedings

SOURCE: T.D. 96–36, 61 FR 19838, May 3, 1996, unless otherwise noted.

§ 103.21 Purpose and definitions.

(a) *Purpose.* (1) This subpart sets forth procedures to be followed with respect to the production or disclosure of any documents contained in CBP files, any information relating to material contained in CBP files, any testimony by a CBP employee, or any information acquired by any person as part of that person's performance of official duties as a CBP employee or because of that person's official status, hereinafter collectively referred to as “information”, in all federal, state, local, and foreign proceedings when a subpoena, notice of deposition (either upon oral examination or written interrogatory), order, or demand, hereinafter collectively referred to as a “demand”, of a court, administrative agency, or other authority is issued for such information.

(2) This subpart does not cover those situations where the United States is a party to the action. In situations where the United States is a party to the action, CBP employees are instructed to follow internal CBP policies and procedures.

(b) *CBP employee.* For purposes of this subpart, the term “CBP employee” includes all present and former officers and employees of U.S. Customs and Border Protection.

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(c) *CBP documents.* For purposes of this subpart, the term “CBP documents” includes any document (including copies thereof), no matter what media, produced by, obtained by, furnished to, or coming to the knowledge of, any CBP employee while acting in his/her official capacity, or because of his/her official status, with respect to the administration or enforcement of laws administered or enforced by CBP.

(d) *Originating component.* For purposes of this subpart, the term “originating component” references the CBP official, or the official's designee, in charge of the office responsible for the collection, assembly, or other preparation of the information demanded or that, at the time the person whose testimony is demanded acquired the information in question, employs or employed the person whose testimony is demanded.

(e) *Disclosure to government law enforcement or regulatory agencies.* Nothing in this subpart is intended to impede the appropriate disclosure of information by CBP to federal, state, local, and foreign law enforcement or regulatory agencies, in accordance with the confidentiality requirements of the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), and other applicable statutes.

(f) *Disclosure to federal attorneys and the Court of International Trade.* Nothing in this subpart is intended to restrict the disclosure of CBP information requested by the Court of International Trade, U.S. Attorneys, or attorneys of the Department of Justice, for use in cases which arise under the laws administered or enforced by, or concerning, CBP and which are referred by the Department of Homeland Security to the Department of Justice for prosecution or defense.

(g) *Disclosure of non-CBP information.* Nothing in the subpart is intended to impede the appropriate disclosure of non-CBP information by CBP employees in any proceeding in which they are a party or witness solely in their personal capacities.

(h) *Failure of CBP employee to follow procedures.* The failure of any CBP employee to follow the procedures specified in this subpart neither creates nor